

In the Matter of Mediation/Arbitration )  
Between )  
THE SCHOOL DISTRICT OF MENOMONEE FALLS )  
and )  
THE MENOMONEE FALLS EDUCATION ASSOCIATION )

Case No. MAR 10 1983  
XXXVIII  
29588/MENOMONEE DISTRICT  
MED/ARB 1623  
Decision No. 19673-A

Hearing Dates: Public - September 13, 1982  
Arbitration - October 18 & November 8, 1982

Appearances:

For the Employer - Diana L. Waterman, Attorney  
Mulcahy & Wherry, S.C.  
Milwaukee, WI

For the Union - David C. Pfisterer  
Executive Director  
Tri Wauk Uniserv Council  
Milwaukee, WI

Mediator-Arbitrator - Reynolds C. Seitz  
Milwaukee, WI

INTRODUCTION

On July 7, 1982, the Wisconsin Employment Relations Commission notified the undersigned that he had been selected to function as Mediator-Arbitrator in the above entitled matter. This notice followed an order of the WERC on June 11, 1982, requiring that mediation-arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between Menomonee Falls Education Association and the School District of Menomonee Falls.

The collective bargaining arose under the reopener contained in Section 2.D of the 1981-83 Agreement. The issues involved the salary schedule, health insurance and dental insurance.

The undersigned concluded mediation on October 18, 1982, but such effort failed to resolve the impasse. Arbitration began on October 18, 1982 after the close of mediation.

I. FINAL OFFERS

A. The Association Offer

1. Health Insurance: Sect. 16, A, 1

The Status Quo shall be maintained for the 1982-83 contract.

2. Dental Insurance: Sect. 16, D

The District shall pay any increase in the premium costs for the Dental Plan included in 16, D.

3. The salary schedule for the 1982-83 school year shall be:

<u>ST</u>	<u>BA</u>	<u>+15</u>	<u>+30</u>	<u>MA</u>	<u>+15</u>	<u>+30</u>
0	1 13925	1.03 14343	1.07 14900	1.13 15735	1.16 16153	1.2 16710
1	1.04 14482	1.07 14900	1.11 15457	1.18 16432	1.21 16849	1.25 17406
2	1.09 15178	1.12 15596	1.16 16153	1.23 17128	1.26 17546	1.3 18103
3	1.14 15874	1.17 16292	1.21 16849	1.28 17824	1.31 18242	1.35 18799
4	1.19 16571	1.22 16989	1.26 17546	1.33 18520	1.36 18938	1.41 19634
5	1.24 17267	1.27 17685	1.31 18242	1.38 19217	1.42 19774	1.47 20470
6	1.29 17963	1.32 18381	1.36 18938	1.44 20052	1.48 20609	1.53 21305
7	1.34 18660	1.37 19077	1.41 19634	1.5 20888	1.54 21445	1.59 22141
8	1.39 19356	1.42 19774	1.46 20331	1.56 21723	1.6 22280	1.65 22976
9	1.45 20191	1.48 20609	1.52 21166	1.62 22559	1.66 23116	1.71 23812
10	1.51 21027	1.54 21445	1.58 22002	1.68 23394	1.72 23951	1.78 24787

<u>ST</u>	<u>BA</u>	<u>+15</u>	<u>+30</u>	<u>MA</u>	<u>+15</u>	<u>+30</u>
11	1.57 21862	1.6 22280	1.64 22837	1.74 24230	1.79 24926	1.85 25761
12	1.63 22698	1.66 23116	1.7 23673	1.81 25204	1.86 25901	1.92 26736
13	1.69 23533	1.72 23951	1.76 24508	1.88 26179	1.93 26875	2 27850
14	1.69 23533	1.78 24787	1.83 25483	1.95 27154	2.01 27989	2.08 28964
15	1.69 23533	1.78 24787	1.9 26458	2.02 28129	2.09 29103	2.16 30078

B. The District Offer

The 1982-83 salary schedule shall be:

<u>STE</u>	<u>BA</u>	<u>+15</u>	<u>+30</u>	<u>MA</u>	<u>+15</u>	<u>+30</u>
0	13445	13889	14588	15206	15717	16134
1	13983	14417	15128	15738	16251	16618
2	14521	14986	15668	16422	16786	17199
3	15126	15556	16266	17152	17446	17876
4	15731	16111	16878	17943	18075	18554
5	16403	16806	17506	18627	18860	19296
6	17075	17500	18235	19464	19646	20006
7	17815	18195	18964	20224	20432	20813
8	18554	19028	19694	20984	21218	21620
9	19361	19722	20569	21897	22004	22426
10	20168	20556	21298	22733	22900	23314
11	21041	21389	22174	23569	23733	24201
12	21915	22222	22903	24482	24676	25008
13	22789	23056	23778	25394	25619	25943
14	0.00	24028	24654	26306	26562	26782
15	0.00	0.00	25529	27219	27505	27750

2. Section 16 - Insurance

A. Hospital - Medical

Revise paragraph 1 to read as follows:

1. The District will pay up to \$131.63 in hospital and medical insurance premiums for the family plan or up to \$50.33 in medical insurance premiums for the single plan, depending on the eligibility of the employee. The Wisconsin Education Association Insurance Trust Hospital-Medical Insurance Plan, \$100.00 deductible, \$250,000 major medical maximum, will be provided to eligible employees.

3. Section 16 - Insurance

D. Dental Insurance:

Revise to read as follows:

The District will pay up to \$25.68 for the family plan premium and up to \$8.76 for the single plan premium per month.

4. The Contract shall incorporate all agreements tentatively agreed upon and all other provisions currently contained in the 1981-83 professional agreement between the School District of Menomonee Falls and the Menomonee Falls Education Association.

II. SPOTLIGHTING CERTAIN FUNDAMENTAL DIFFERENCES BETWEEN THE OFFERS

A. Regarding Salary

The 1981-82 Salary Schedule was:

<u>ST</u>	<u>BA</u>	<u>+15</u>	<u>+30</u>	<u>MA</u>	<u>+15</u>	<u>+30</u>
0	12740	13160	13823	14409	14893	15288
1	13250	13660	14334	14913	15399	15747
2	13759	14200	14846	15562	15906	16297
3	14333	14739	15413	16253	16531	16939
4	14906	15266	15993	17003	17127	17581
5	15543	15924	16588	17651	17872	18284

<u>ST</u>	<u>BA</u>	<u>+15</u>	<u>+30</u>	<u>MA</u>	<u>+15</u>	<u>+30</u>
6	16180	16582	17279	18444	18616	18957
7	16881	17240	17970	19164	19361	19722
8	17581	18029	18661	19884	20106	20486
9	18346	18687	19490	20749	20850	21250
10	19110	19477	20182	21541	21699	22091
11	19938	20266	21011	22334	22488	22932
12	20766	21056	21702	23198	23382	23696
13	21594	21846	22531	24063	24276	24583
14	0	22767	23361	24928	25169	25378
15	0	0	24190	25792	26063	26295

The 1981-82 Index horizontal and vertical was:

	<u>1.00</u> <u>BA</u>	<u>1.0325</u> <u>BA+15</u>	<u>1.0854</u> <u>BA+30</u>	<u>1.1310</u> <u>MA</u>	<u>1.1685</u> <u>MA+15</u>	<u>1.2000</u> <u>MA+30</u>
0	1.00	1.00	1.00	1.00	1.00	1.00
1	1.04	1.038	1.037	1.035	1.034	1.03
2	1.08	1.079	1.074	1.080	1.068	1.066
3	1.125	1.12	1.115	1.128	1.11	1.108
4	1.17	1.16	1.157	1.18	1.15	1.15
5	1.22	1.21	1.20	1.225	1.20	1.196
6	1.27	1.26	1.25	1.28	1.25	1.24
7	1.325	1.31	1.30	1.33	1.30	1.29
8	1.38	1.37	1.35	1.38	1.35	1.34
9	1.44	1.42	1.41	1.44	1.40	1.39
10	1.50	1.48	1.46	1.495	1.457	1.445

	1.00 BA	1.0325 BA+15	1.0854 BA+30	1.1310 MA	1.1685 MA+15	1.2000 MA+30
11	1.565	1.54	1.52	1.55	1.51	1.50
12	1.63	1.60	1.57	1.61	1.57	1.55
13	1.695	1.66	1.63	1.67	1.63	1.608
14		1.73	1.69	1.73	1.69	1.66
15			1.75	1.79	1.75	1.72

For the 1982-83 school year the District's offer increases the BA base salary to \$13,445 and the MA salary base to \$15,206. After those changes the District maintains the same increment structure as 1981-82.

The offer of the Association increases the BA base to \$13,925, but devised a different index than the one used in 1981-82. (See the Index set forth in the salary table which presented the last offer.)

The Association has proposed that the index be used to compute the salary off the BA base. Under the District offer, the salary is computed from the base in each line.

Figures offered by the District and not disputed by the Association indicate that the District's method of computing salaries represents an increase of \$422,480 over 1981-82 and that the method used by the Association represents an increase over 1981-82 of \$677,632. In other words, in salaries alone the Association offer would cost the District \$255,152 more than the offer of the District.

#### B. Regarding Health Insurance

The District has been paying the full cost of health insurance since 1978-79. Due to increases in health insurance premiums, the District estimates that even though its offer is to put a cap on health insurance, its offer would require paying a total of \$44,525 or 15% more than it did in 1981-82. Under the Association offer which requires the District to pay the full cost of health insurance, it is estimated that the total cost could go to \$66,739 or an increase of 23% more than the District paid in 1981-82.

C. Regarding Dental Insurance

The District has proposed to maintain the practice of continuing to pay a specified dollar amount. The amount that it proposes under its offer, however, would require it to pay 15% more than it did in 1981-82.

The Association offer seeks to require the District to pay any increase in premiums for dental insurance. This would require the District to pay 36% more than it did in 1981-82 or approximately \$20,000.

D. Regarding Entire Package

The total package cost of the final offer of the District is \$7,936,677 or \$555,199 or 7.52% above the 1981-82 wage and benefit cost. The total package cost of the offer of the Association is \$8,274,877 or \$893,399 or 12.1% above the 1981-82 wage and benefit cost.

III. POSITION OF THE PARTIES

The position of the parties was directed to those factors specified in Section 111.70(4)(cm)7 of the Wisconsin Statutes to which the Arbitrator is to give weight.

A. The Interest and Welfare of the Public

1. District Position

The interest of the general public and the interest of the employees are diametrically opposed. The District offer more reasonably addresses both interests. Arbitrators have recognized that the impact upon taxpayers must seriously be considered. Arbitrators have shown concern over the state of the economy and shown recognition of its impact from the standpoint of the practical and feasible ability of the public employer to maintain or increase a level of funding and the impact on the public. The Midwest and the particular Wisconsin area involved in this case has been particularly hard hit by adverse economic conditions. There have been plant closings and layoffs of thousands of employees. Unemployment in Waukesha County has gone to 9.9%. Wage freezes have been occurring

in both the private and public sector. As respects per pupil operating costs, the District ranks 5 among 18 comparable districts in Waukesha County and the Braveland Athletic Conference. In 1981-82 the District ranked 15 in receipt of per pupil aid money with the result that a greater burden rests on the District taxpayer. The District taxpayer pays the highest tax rate in Waukesha County at a time when population in the area is falling. Economic conditions have resulted in slower tax payments. Waukesha County is phasing out its program of helping to carry over the District during the shortfall in collections which creates a serious cash flow problem. In 1981-82 the shortfall equalled \$502,298. In 1982-83 the amount will double. An award favorable to the Association will further increase the need to borrow money.

## 2. Association Position

In this instance, there was rather clear evidence that the public did not feel threatened by the proposal of the Association. The contrast in the manifestation of interest when the public was given an opportunity to attend a public meeting between a proposal to authorize the District to set up a new school transportation policy and the meeting concerning the relative offers of the District and the Association on the issues in this case was marked. More than 700 taxpayers attended each of two meetings devoted to transportation to indicate that they felt the increased busing of students was an unnecessary expenditure. In contrast, fewer than 100 people showed up for the public hearing devoted to a discussion of the offers involved in this case, and about half of that group were either teachers, school board members or administrators. The District could have altered its tax levy in time to provide the funds to meet the offer of the Association. Even though the County will no longer bankroll the District while it waits for tax receipts since the local taxpayer will ultimately have to pay the bill, it would be worth the effort of the District to try to convince the taxpayers that in the long run they would save money if they could avoid deferring one half of their taxes.

It is true that lower State aid means a greater portion of the costs of education must be supported by taxes, but low State aids are indicative of a greater not lesser ability to pay. The District asserts a population decline of about 4,000 persons. But figures also indicate a student decline of about 4,000. Since taxes are collected on property and not on individuals, the burden on each household has been reduced. The District habitually uses the defense of "times are bad" to block the reasonable wage requests of teachers in their effort to "catch up" with the low salaries of the past. Even in times of an economic upturn, the District position has always been that "times are not that good".

B. THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES  
COMMONLY KNOWN AS THE COST OF LIVING

1. The District Position

Using various methods of measuring inflation, the rate of inflation has ranged from a high of 5.9% in August, 1982, to a low of 2.9% in July, 1982. Regardless of index or measure employed, the offer of the District significantly exceeds the rate of inflation. None of the indicators used supports the 11.43% Association proposed increase in wages or the 12.1% total package increase. A recent 1982 decision by Arbitrator Fleischli has expressed serious concern over double digit wages and benefit demands as they relate to cost of living. The rate of inflation has slowed significantly since the latter part of 1981. The Nation has not experienced double digit inflation since March, 1981. Figures demonstrate that from 1978-79 to 1981-82 the wages and benefit increases given to Menomonee Falls teachers exceeded the overall increase in the Consumer Price Index. As an example, at the BA minimum, the Menomonee Falls teachers exceed the Consumer Price Index by 5.2% for wages and 6.4% for wages and benefits. At the BA+30 step 12 to MA step 15 they surpassed the cost of living on wages by 23.2% and for wages and benefits by 24.1%.

There is respectable arbitrable authority to establish that it is appropriate to include increments in computing wage increases given teachers.

Furthermore, in computing how teachers fare in comparison with inflation, the amount paid for medical and dental expenses can properly be considered. The Association does not give proper consideration to such factors.

## 2. The Association Position

There is no dispute that the cost of living has slowed its breakneck pace over the last several years. However, when inflation was at the runaway figure of 12% or more, the Menomonee Falls teachers never were given corresponding increases in wages. Salary gains always lagged a year behind the cost of living upswing. Now teachers are being asked to respond immediately to a slower growth in rate. Comparisons made by the District are between 1978-79 salaries and those of 1981-82. Furthermore, exhibits include not only the advance by increments but raises associated with securing an advanced degree.

Both the Nixon administration wage and price freeze and the Carter administration wage and price guidelines did not consider as raises incremental costs. Such were considered as promotions. Counting in raises which result from additional credits or degrees does not take account of the accompanying costs born by the teachers. After increments and advancement due to earning additional credits are subtracted, the comparison between 1978-79 and 1981-82 reveals that the great majority of Menomonee Falls teachers did not keep up with the cost of living. Because the District uses increments to offset increases in the cost of living, a teacher's standard of living can never be increased except in minute steps and, hence, increased experience and improved skills are not properly rewarded. Figures indicate that it now takes a teacher six years to realize the buying power that was achieved in two or three years by the teacher who started in 1977-78. Teachers who have completed the movement through the salary schedule are the most seriously harmed by the increases in the cost of living because they no longer receive an increment.

Arbitrator Rice is cited as viewing the increment as inappropriate when comparing increases with the Consumer Price Index. Cited as the best way of forcing up the cost of living criteria is the determination of what comparable districts are paying teachers. Several arbitration decisions support this view.

C. COMPARISON OF WAGES OF TEACHERS IN MENOMONEE FALLS WITH WAGES RECEIVED BY TEACHERS IN COMPARABLE DISTRICTS

1. The District Position

Reviewing factors which arbitrators have used to determine comparability, the District asserted that it was logically comparable with 17 other school districts in Waukesha County and in the Braveland Athletic Conference. In selecting the list, the District considered geographic proximity, average pupil membership, and full-time equivalency staff, athletic conference, per pupil operating cost, and full value tax rate.

Two District constructed tables show comparisons (see attached Board Exhibits 43 and 44 in Appendix).

Asserting that 64% of the Menomonee Falls teachers receive the maximum in their respective lanes, the District asserted that its offer was competitive. To so establish it constructed a table:

<u>1981-82 Sal.Pos.</u>	<u>% M.F.Teachers at Position</u>	<u>M.F. Salary</u>	<u>Comparable Average</u>
BA 0 Max	6.8	22,594	20,811
BA+15 max	10.0	22,767	21,569
BA+30 Max	8.8	24,190	22,589
MA 0 Max	21.1	26,792	24,829
MA+15 Max	5.2	25,063	25,404
MA+30 Max	5.4	26,295	26,342
<u>1982-83</u>		<u>Board Offer</u>	
BA 0 Max	9.5	22,789	22,788
BA+15 Max	11.5	24,028	23,621
BA+30 Max	8.4	25,529	24,645
MA 0 Max	22.6	27,219	27,195
MA+15 Max	6.0	27,505	27,903
MA+30 Max	6.1	27,750	28,619

The District pointed out that out of the 64% group in 1981-82 in all but the MA+15 and MA+30 maximum where a total of 10.6% of the teachers were clustered, Menomonee Falls salaries exceeded the average of comparable districts and the same remained true in 1982-83, where only 12.1% of the Menomonee Falls teachers in the maximum categories receive somewhat less under the District offer.

Using what it termed as a representative sample of 30 teachers at steps other than the maximum, the District presented a table showing that under its offer increases for 1982-83 would range mostly in the 9.5% and up to 10.37% category. This led the District to claim that as teachers move through the salary schedule they will receive a significantly larger dollar increase and percent increases than the overall average 7.13% under the District offer.

Recognizing that the Association had selected as comparable school districts those in the metropolitan Milwaukee area and had argued that settlements in these areas justify its final offer of 11.4% for wages, the District pointed out that recently arbitrators have significantly tempered their reliance on local settlement patterns based upon the time at which the settlement was achieved. The District argued that the philosophy of recent arbitration decisions is that comparative settlements can only be given significant weight when they occurred at the same relative time and in the same economic climate. The District argued that settlements cited by the Association did not meet such criteria because they were multi-year agreements. The District pointed out that the record on settlements in areas with which the Association felt it was proper to compare were all made at a time when indices registered double digit inflation. The District argued that it should not be penalized because some districts misjudged the trend in the economy. Furthermore, the District pointed out that recent wage settlements revealed increases in Oconomowoc of 7.52%, in Cudahy of 8%, and in South Milwaukee 9%. This, it was asserted, would mean that the Association offer for 1982-83 exceeds the average teacher increase in Oconomowoc by \$1,032, in Cudahy by \$824, and in South Milwaukee by \$596. In contrast, the District stated that its offer exceeded the average teacher wage increase in Oconomowoc by \$65, was within \$143 of the average wage increase in Cudahy, and within \$371 of the average wage increase in South Milwaukee.

In its reply brief, the District stressed that the Association placed an unrealistic stress on the fact that a few teachers at the MA+15 and MA+30 maximums do not receive a competitive wage rate because they do not receive the average salary of the Milwaukee metropolitan area districts. The District argued that in 1981-82 only 28 of the teachers were at the maximum benchmarks to which the Association pointed. The other side of the picture, argued the District, is that the vast majority of Menomonee Falls teachers receive salaries above the average of both the Association comparables and the District comparable.

## 2. The Association Position

The 25 Metropolitan school districts represent the fair group with which to compare. To ignore such districts disregards the single most compelling factor governing monetary settlements - the economic pressure of the metropolitan area on its suburbs. All suburban schools are included in the research information compiled by independent research organizations. The District itself used the data when its purposes are served - such as in the Annual Report to the taxpayers and the comparison of administrators salaries.

Comparisons were presented in several tables (see attached MFEA Exhibits 13-17 in Appendix).

In responding to the position of the District that comparative settlements are of significance only when those settlements occurred at the same relative time and in the same economic climate, the Association challenged the accuracy of the statement that all settlements used by the Association were multi-year agreements between one and one-half to two years old. It argued that the Maple Dale settlement of 11.04% occurred in late August. The Association cited two recent decisions by arbitrators (Waunakee, December 16, 1982, Krinsky, and Franklin, November 18, 1982, Imes) to support its contention that arbitrators make decisions on the basis of comparative area rates without taking a "snapshot" or "single instant" view of the economy. In that respect, a quote is set forth from the decisions of Arbitrator Krinsky:

"These figures show clearly that the District's offer represents a substantial deterioration of Waunakee's salary position in comparison to the other districts in the conference. It does not mean that Waunakee's offer is not a responsible one, or a substantial one. It would be difficult to say in today's economy that a package increase of 8.46 or 9.12 is not responsible because it is too low, or that it is not substantial. It means, however, that Waunakee's offer does not keep up with its neighbors' offers, something which the statute suggests should be done.

It is with considerable reluctance that he has decided in favor of the Association's position, which is most reasonable in terms of the statutory criteria, in his opinion. The reluctance is caused by awarding a settlement of the magnitude of 10.42% or 11.07% in today's depressed economy. It is the offer which is best supported by the record before the arbitrator, however."

D. POSITION OF PARTIES ON INDEX PATTERN

1. The District Position

The suggestion of the Association that a change by made in computing the wage from the base in each lane to a computation from the BA base results in dramatic changes at each step in the salary schedule. The Association's wage offer represents an increase of \$677,632 or an average teacher wages only increase of \$2,596.

2. The Association Position

The revised index was intended to smooth out asserted aberrations in the existing index - such as the \$2,600 increase for 30 graduate credits at the BA level for those working toward a Master's degree while a similar 30 graduate credits beyond the Master's only generated \$500.

E. POSITION OF PARTIES ON HEALTH AND DENTAL INSURANCE

1. Position of District

The District would be required to pay \$66,739 under the Association offer on Health Insurance than it paid in 1981-82. The District offer of an increase of 15% in contribution on health insurance, which would cost \$44,525, is very fair.

The District felt that its offer to increase contributions to dental insurance by 15% was more fair than the Association demand which would increase the District obligation in excess of 36% or to a total increase of \$20,000.

The District admitted that it had reluctantly absorbed 100% of the increase in health insurance premiums in the past, but asserted that the staggering increase in costs forced a retrenchment under the current economic conditions.

The District further asserted that it was not out of line with comparable educational districts or private sector employers in the Menomonee Falls area.

2. Position of the Association

Comparable school districts have not capped health insurance. The District has failed since 1977 to get a cap on health insurance at the bargaining table. The increase in premium cost is not greatly different than increases in other comparable districts - in fact, it is lower than in many of the comparable districts.

Putting a cap on health insurance reduces income as compared with teachers in a district with an uncapped plan. When the dental rate is imposed upon the teachers, the effect on their income is even more devastating.

In evaluating the reasonableness of the dental offer, it must be remembered that the District is being asked to pay only the full increase in premium but not the full premium.

The facts do not indicate that private employers in Menomonee Falls are reducing health insurance benefits as the District asserted.

F. ADDITIONAL ON POSITION OF THE PARTIES

In addition to the points brought out at the hearing, the District presented 84 exhibits and an additional 39 exhibits by way of rebuttal. The Association presented somewhat in excess of 59 exhibits. The District filed an initial post-hearing brief of 43 pages and a rebuttal brief of 33 pages. The Association's initial post-hearing brief was 30 pages and its rebuttal brief was 19 pages.

The Arbitrator did review all the materials submitted. In the previous section, the fundamental and basic position of the parties have been set forth. It would obviously be unrealistic for the Arbitrator to have attempted to reproduce all the materials and the arguments based upon them. In this section he has selected a few more arguments for exposure.

In its reply brief the District strongly continued to argue that its pool of comparables was the proper pool. However, it stressed that in 1981-82 there were only two salary schedule maximums in which a few Menomonee Falls teachers slipped below the Milwaukee area average. The District set the number at 28. The District stressed that the emphasis of the Association on the MA+15 maximum and the MA+30 maximum where the 28 teachers are found places too great an emphasis on too few teachers.

The District argued that the redistribution of monies sought by the Association would have improved the salaries of only 48 teachers and would penalize more teachers than it would assist.

Asserting that 48.4% of the pupils in the District were in high school, while in the typical district only 32% were in high school, the District argued such fact led to higher costs. Also leading to higher costs the District claimed was the fact that the average age for its teaching staff was 42. It compared this with the average age in 1971 of 33.

The Association argued that those who graduate from college and go into business areas do better than teachers and that often high school graduates can find areas which offer greater financial rewards than teaching.

In attacking the District position on comparability, the Association found it strange that the District would point to a 8% increase in wages in the 1982-83 agreement in Cudahy (a District in the Milwaukee metropolitan area), but refuse to recognize the voluntary settlement of 11.04 in Maple Dale (also within the Milwaukee metropolitan area).

In responding to the District position that its 7.5% increase was in line with the 7.5% given to its custodians and food service employees, the Association argued that such figure represented a real raise because custodians and food service workers have no increment schedule but that those teachers who have no increment coming will actually secure only a 5.5% increase.

#### IV. DISCUSSION AND OPINION

The preliminary statement needs to be that the Arbitrator did consider all the factors set forth in Wisconsin Statute 111.70(4)(cm)7 to the extent they were applicable to this case. It should be apparent in this section that the Arbitrator, like the parties themselves, felt that certain of the factors carried more weight than others. It is important to understand that the Statute does not specify the weight that must be given to each factor. The factors to be considered or specified in the Statute are:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the muncipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services commonly known as the cost-of-living.

- f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment

Writing in the December, 1982 issue of the Arbitration Journal published by the American Arbitration Association, Charles M. Rehmus, Dean of the New York State School of Industrial and Labor Relations at Cornell University, and a labor arbitrator, makes some very significant comments about the Wisconsin procedure of final offer arbitration. He states:

"The theory of final offer is quite simple. It was believed that the logic of the procedure itself would force the parties even in threatened impasses to continue moving ever closer together in search of a position that would likely receive neutral sympathy. Ultimately, so the argument went, they would come so close that despite the early threat of stalemate, they could almost inevitably find their own settlement. Even if it did not, the position of the parties would be so similar when they go to arbitration that the range of neutral discretion would be limited severely and thus not threaten seriously the vital interests of either, no matter which way the decision went.

As is often the case with theories, however, experiments with final offer arbitration that began in the United States in the 1970's have shown that in practice the process of final offer selection is more complex than was originally believed.

One point is clear, however. Small variations in the way a final offer procedure is written have a considerable impact on the nature of the process that follows."

Building on this philosophy, Dean Rehmus turns directly to the Wisconsin situation and says:

"Rigid final offer procedures such as those adopted in Wisconsin. . . require the selection of one or the other of the two whole final packages for settlement. . . .When arbitration does take place, the award often contains elements that seem unjust to one or both parties." (Emphasis added).

The situation in this case is such as to convince the Arbitrator of the wisdom and accuracy of the thoughts expressed by Dean Rehmus.

Since the passage of the Wisconsin Employment Relations Act with its provision for arbitration on a final offer basis, this Arbitrator has been convinced of the constitutionality of the Statute, and has never espoused the view that legislative power was improperly delegated. The confining of the Arbitrator to the boundaries of the last offer persuaded this Arbitrator to feel that the Statute was constitutional. Now that ~~view~~ view has been approved by the recent decision of the Court of Appeals of Wisconsin (Milwaukee County v. Milwaukee District Council 48, AFCME, 325 N.W. 2d. 350[1982]).

But, the recognition that the Wisconsin Statute is constitutional does not mean that this Arbitrator is satisfied with it. He feels that a decision which would be much more logical and just would result if he had the power to fashion a holding somewhere within the boundaries of the last offers. If such were possible, the Arbitrator would not be turned loose without any restraint, but he would be in a position to do more to mitigate against one or the other party viewing his award as unjust.

But this Arbitrator has no such power. Regretably, he is forced into a position of determining which offer seems most right. But when he makes that determination, he is very aware that the result will be most unsatisfactory to him and he knows that he will not be able to convince one party to this arbitration that the result is fair.

It is time now to make some analysis of the situation.

In addressing itself to the factor of interest and welfare of the public, the Association put great stress upon its assertion that the attendance of only about 100 at the public meeting held preliminary to mediation-arbitration on the last offers when contrasted to the 700 that attended each of the two public meetings scheduled to discuss a proposed new transportation policy, showed that the public was not too concerned about the proposal to increase teacher wages and benefits. At first thought, this seems like a very sound argument. But, reflection does not induce the conclusion drawn by the Association. There was no evidence as to the publicity relative to the scheduled meetings. The transportation question meetings may have been more extensively publicized. The public may have been made aware of the meetings relative to the best offer in a much less widely publicized manner. And, even if some notice had come to their attention, large numbers of the public may not have grasped the real difference in impact between one offer and another.

The Arbitrator finds it difficult to believe that the taxpayers would not be seriously concerned if he/she understood that the offer of the Association would require an increase in the salary and benefit structure of \$677,632 over the 1981-82 year and that such represented an increase of \$255,152 over the offer made by the District. This would be particularly true in view of the state of the economy, which the Arbitrator finds was accurately described by the District. The Midwest and Wisconsin have been particularly hard hit by the adverse economic conditions. There is high unemployment - including that in Waukesha County. The District taxpayer is now paying one of the very highest rates in Waukesha County. Tax payments have been considerably slower and the remedy does not lie in the solution offered by the Association. It seems unrealistic to expect that any type of campaign would induce many more taxpayers to pay their bill in full in January. It is almost a certainty that a great many would feel they lack the ability to do so.

The arguments as to whether teachers wages have kept up with the cost of living presents a number of viewpoints which require a response. Even the Association admits the rate of inflation has slowed very considerably. This does make possible a view that

double digit wage increases are presently inappropriate. The Arbitrator does find much truth in the assertion of the Association that when inflation was at 12% or more, the teachers never received the benefit of a corresponding increase. There is, therefore, always some pull to try to help them recoup lost ground. Unfortunately, the practical side of the matter is that from the standpoint of the impact on the public, this is difficult to do in times of economic stress - the present state of the economy.

There is a legitimate split of thinking among arbitrators as to whether increments should or should not go into any computation as to whether teachers wages have kept pace with the cost of living.

The practical problem again is that in an era of economic stress, the impact of the increments are felt.

Actually, this Arbitrator agrees with the Association when it stated that the best way of facing up to the cost of living criteria is the determination of what comparable districts are paying teachers.

Unfortunately, in this case, the parties do not agree on what are the comparable districts.

The District did spend considerable effort to establish the validity of its pool by analyzing geographic proximity, average pupil membership, and full-time staff equivalency, the athletic conference, per pupil operation cost and full value tax rates. The Arbitrator was convinced that it would be appropriate for him to consider the comparables proposed by the District.

In support of its list of comparables, the Association did little more than assert the economic pressure of the metropolitan area on the suburbs of Milwaukee and to point out that the District used comparisons with the districts proposed by the Association when it served its purposes in making its annual report to the taxpayers and in making comparisons on administrators salaries.

The Arbitrator is convinced that there is logic in the position of both parties as respects comparables. He feels the Association attitude that the District uses

the position the Association espouses as comparable when it suits its purpose to do so cannot be ignored. However, even taking that into serious consideration, the Arbitrator comes to the conclusion that the record of settlements by the comparables used by the Association does not demonstrate that the Association offer requiring an 11.4% increase in wages is the prevailing pattern. This is because the Arbitrator does agree with the philosophy of Arbitrator Gunderman (School District of Cudahy, October 28, 1982) and Arbitrator Mueller (School District of South Milwaukee, December 6, 1982) relative to the impact of time of negotiations. Arbitrator Mueller expresses the philosophy well:

"The timing of any settlement is highly relevant in all situations when determining the appropriate weight that should be afforded a particular settlement at some specific point in time. Secondly, it simply cannot be reasonably argued that the economic climate and condition at a particular time in negotiations does not have a substantial affect on the results of any negotiations."

When the philosophy of the time of settlement is applied to the comparables suggested by the Association, the result is that an 11% increase in wages is found in only the Maple Dale settlement.

The effort of the Association to establish aberrations in the various salary lanes has merit in accomplishing that end, but it cannot support a plan of correction which would require a wage increase of the proportions inherent in the Association offer.

One argument made by the Association to support its position was that teachers suffer salary-wise in comparison with other occupations. It is, of course, possible to pick out certain occupations to demonstrate the truth of such statement. However, it is hazardous to attempt to establish that one occupation or profession is more important than another. It does seem, however, that from the standpoint of the impact for good on our future way of life, it is hard to say that any other occupation or profession is more important than that of teaching - including especially elementary and secondary teaching. To take but one example to illustrate, it is in a sense very tragic that the good teacher with advanced

degrees and fifteen or more years of experience, will in all too many cases be earning less than a young woman or man who has just graduated from law school and secured her/his first employment as a lawyer. And, it is not a satisfactory argument to say that the teacher has a shorter work day and longer vacations. Those who make such argument are utterly unrealistic. They ignore the hours of preparation required from day to day. They ignore the hours out of class required in correcting student assignments. They ignore the hours spent in advanced training. They ignore the need for vacations to recharge emotional and physical energy to protect against "burnout" which is a peculiar stress that confronts elementary and secondary teachers.

Unfortunately, however, the fact of life is that a public school teacher has to compete for available tax dollars with all the other needs of governmental bodies that serve the requirements of the public in our complex society.

It is now time to turn attention to the offers relative to health and dental insurance. If the Arbitrator was functioning under the statute involved in the State of Iowa, he could determine that the Association offer on health and dental insurance was more reasonable than that of the District, even though he held that the Association offer on wages could not be supported. (He is not determining that matter in this case.) But, under the Wisconsin statute, this is not possible. The arbitrator has to react to the entire package. Since he has already concluded that he felt that he could not support the Association wage request, there is no reason to go into a detailed discussion of the health and dental insurance. The Arbitrator will simply say that it is obvious that the Association offer on health and dental insurance does nothing to bring the Association package down to a percentage increase which the Arbitrator could approve.

It seems appropriate to state that the Arbitrator has taken "judicial notice" of some recent news accounts which indicate some slight improvement in the economy. He has concluded that the indications are so slight that they cannot change his viewpoint as respects the impact upon the public of the Association offer. Furthermore, he has taken notice of a statement in the Milwaukee Journal of March 5, 1983.

A UPI, AP, New York Times dispatch stated:

"The sobering news that unemployment is not getting better, despite many other signs of recovery, is casting a shadow over the nation's otherwise bright economic picture.

The Labor Department said Friday that the jobless rate remained at 10.4% of the nation's work force in February.

And since fear of unemployment is often identified as a key reason consumers are reluctant to increase their spending enough to reinforce recovery, analysts are concerned that the news will feed back into the economy to slow down improvement."

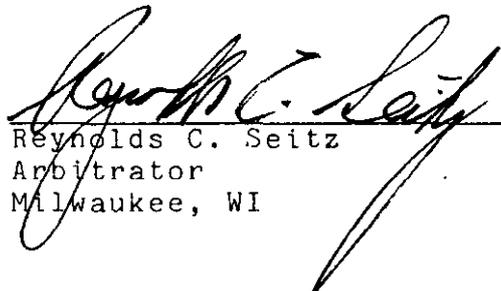
V. THE AWARD

For all the reasons stated previously, the Arbitrator very reluctantly makes the award that the increases offered by the District are more reasonable than those requested by the Association. The Arbitrator takes the opportunity once more to lament that the rigid Wisconsin statute does not permit him to make some upward adjustment from the present teachers wages which would be in excess of that offered by the District.

The offer of the District on wages and health and dental insurance is selected as the most reasonable under all the circumstances.

DATE March 12, 1983

SIGNED

  
\_\_\_\_\_  
Reynolds C. Seitz  
Arbitrator  
Milwaukee, WI

APPENDIX

1981-82 WAGE COMPARISONS

<u>District</u>	<u>BA</u> <u>Base</u>	<u>BA</u> <u>Step 7</u>	<u>BA 0</u> <u>Max.</u>	<u>BA+15</u> <u>Max.</u>	<u>BA+30</u> <u>Max.</u>	<u>MA</u> <u>Base</u>	<u>MA</u> <u>Step 7</u>	<u>MA 0</u> <u>Max.</u>	<u>MA+15</u> <u>Max.</u>	<u>MA+30</u> <u>Max.</u>
Menomonee Falls	\$12,740	\$16,881	\$21,594	\$22,767	\$24,190	\$14,409	\$19,164	\$26,792	\$25,063	\$26,295
<u>Waukesha County</u>										
Arrowhead UHS	12,700	17,306	22,550	22,850	23,450	14,300	19,340	25,630	25,930	26,530
Elmbrook	12,780	17,237	21,497	21,962	23,764	14,434	19,328	25,484	25,949	26,422
Hamilton	12,848	16,757	19,722	20,058	22,296	14,526	17,764	23,749	24,085	25,540
Kettle Moraine	12,742	16,131	20,078	21,197	23,776	14,287	17,747	24,660	24,771	25,392
Mukwonago	12,996	16,243	20,196	20,494	21,090	14,432	18,280	24,020	24,562	25,646
Muskego	13,040	16,410	23,035	23,575	23,950	13,965	18,070	26,285	26,950	28,740
New Berlin	13,220	16,920	20,885	21,680	22,470	14,805	19,300	24,060	24,850	25,640
Oconomowoc	13,200	—	23,700	24,115	24,530	14,860	—	26,635	27,050	27,465
Pewaukee	12,800	17,245	19,150	21,120	21,120	14,080	18,595	23,110	23,820	24,530
Waukesha	12,950	17,224	21,238	21,886	21,886	14,893	19,166	24,994	25,112	26,159
<u>Athletic Conference</u>										
Brown Deer //	12,376	16,512	20,659	21,195	24,175	13,128	17,909	24,767	25,256	25,601
	13,069	17,436	21,816	22,382	25,528	13,864	18,912	26,154	26,670	27,035
Cedarburg	12,700	16,790	21,866	22,301	22,747	13,742	18,168	24,725	25,466	26,227
Germantown	12,925	17,449	19,388	20,680	21,972	14,865	19,387	23,911	25,203	26,495
Grafton	12,490	16,166	20,367	21,585	21,585	13,743	18,123	23,157	23,866	25,235
Maquon	12,980	17,783	19,470	20,989	21,547	14,278	19,600	24,922	25,181	26,090
Nicolet	12,807	17,231	19,454	20,702	20,702	13,770	19,075	28,118	28,654	29,542
Port Washington	12,875	17,381	19,956	21,224	22,274	14,163	18,669	23,176	24,463	25,751

1. First figure paid for first 6 months; 2nd figure paid second 6 months.

1982-83 WAGE COMPARISONS

	<u>BA</u> <u>Base</u>	<u>BA</u> <u>Step 7</u>	<u>BA 0</u> <u>Max.</u>	<u>BA+15</u> <u>Max.</u>	<u>BA+30</u> <u>Max.</u>	<u>MA</u> <u>Base</u>	<u>MA</u> <u>Step 7</u>	<u>MA 0</u> <u>Max.</u>	<u>MA+15</u> <u>Max.</u>	<u>MA+30</u> <u>Max.</u>
Menomonee Falls (Bd)	\$13,445	\$17,815	\$22,789	\$24,028	\$25,529	\$15,206	\$20,224	\$27,219	\$27,505	\$27,750
(Assoc)	13,925	18,660	23,533	24,787	26,458	15,735	20,888	28,129	29,103	30,078
<u>Waukesha County</u>										
Arrowhead (Bd)	13,630	18,236	23,480	23,780	24,380	15,230	20,270	26,560	26,860	27,460
(Assoc)	13,751	18,738	24,416	24,741	25,390	15,483	20,940	27,751	28,076	28,725
Elmbrook	14,000	18,882	23,549	24,059	26,033	15,812	21,173	27,917	28,426	28,944
Hamilton	Not Settled									
Kettle Moraine	Not Settled									
Muskego	Not Settled									
Mukwonago	Not Settled									
New Berlin	14,870	19,035	23,495	24,390	25,280	16,655	21,710	27,065	27,955	28,845
Oconomowoc	14,000	—	25,285	25,700	26,115	15,660	—	28,220	28,635	29,050
Pewaukee	Not Settled									
Waukesha	Not Settled									
<u>Athletic Conference<sup>1</sup></u>										
Brown Deer	13,995	18,671	23,360	23,966	27,336	14,845	20,251	28,005	28,558	28,948
Cedarburg (Bd)	13,510	17,860	23,259	23,725	24,199	14,618	19,326	26,301	27,688	27,904
(Assoc)	13,825	18,278	23,804	24,278	24,768	14,959	19,777	26,914	27,721	28,554
Germanatown	Not Settled									
Grafton	13,610	17,628	22,219	23,551	23,551	14,979	19,767	25,271	26,044	27,540
Mequon	13,980	19,153	20,970	22,046	23,207	15,378	21,110	26,842	27,121	28,100
Nicolet	13,992	18,825	21,253	22,617	22,617	15,044	19,941	30,719	31,304	32,275
Port Washington (Bd)	13,560	18,306	21,018	22,374	23,730	15,594	20,340	25,056	26,442	27,120
(Assoc)	13,875	18,731	21,506	22,894	24,281	15,956	20,813	25,669	27,056	27,750

MENOMONEE FALLS FINAL OFFERS  
 COMPARED TO 13 AREA DISTRICTS  
 SETTLED FOR 1982-1983

BA MINIMUM SALARY

1981-1982		1982-1983	
Whitnall	13,819	Whitnall	15,087
West Allis	13,617	West Allis	14,912
Greendale	13,340	New Berlin	14,810
New Berlin	13,220	Wauwatosa	14,351
Wauwatosa	13,106	Greendale	14,330
Shorewood	13,073	Shorewood	14,276
Franklin	12,900	Franklin	14,150
Maple Dale-Indian Hill	12,809	Elmbrook	14,000
Nicolet	12,807	Brown Deer	13,995
Elmbrook	12,780	Nicolet	13,992
Whitefish Bay	12,753	Maple Dale-Indian Hill	13,936
Menomonee Falls	12,740	MFEA <i>Proposal</i>	13,925
Brown Deer	12,723	Whitefish Bay	13,901
Glendale	12,594	Glendale	13,727
		Menomonee Falls BOE	13,445

Menomonee Falls ranked 12th out of 14 districts in 1981-82.

Menomonee Falls will rank 12th out of 14 districts in 1982-83 under the MFEA proposal.

Menomonee Falls will rank 14th out of 14 districts in 1982-83 under the School Board proposal.

MENOMONEE FALLS FINAL OFFERS  
 COMPARED TO 13 AREA DISTRICTS  
 SETTLED FOR 1982-83

BA MAXIMUM SALARY

1981-82		1982-83	
West Allis	24,516	West Allis	27,098
Franklin	22,838	Franklin	24,988
Whitefish Bay	22,609	Whitefish Bay	24,644
Shorewood	22,224	Shorewood	24,269
Wauwatosa	21,756	New Berlin	24,095
Male Dale-Indian Hill	21,727	Wauwatosa	23,823
Menomonee Falls	21,594	Maple Dale-Indian Hill	23,639
Elmbrook	21,497	Elmbrook	23,549
New Berlin	21,485	Menomonee Falls EA	23,533
Brown Deer	21,238	Brown Deer	23,360
Greendale	21,200	Greendale	23,320
Whitnall	20,886	Whitnall	22,819
Glendale	20,766	Menomonee Falls BOE	22,789
Nicolet	19,454	Glendale	22,635
		Nicolet	21,254

Menomonee Falls ranked 7th out of 14 districts in 1981-82.

Menomonee Falls will rank 9th out of 14 districts in 1982-83 under the MFEA proposal.

Menomonee Falls will rank 12th out of 14 districts in 1981-82 under the Board proposal.

MENOMONEE FALLS FINAL OFFERS  
 COMPARED TO 13 AREA DISTRICTS  
 SETTLED FOR 1982-1983

MA MINIMUM SALARY

1981-1982		1982-1983	
West Allis	16,451	Whitnall	16,905
Whitnall	15,478	West Allis	16,874
Franklin	15,222	Franklin	16,697
Shorewood	14,903	New Berlin	16,655
New Berlin	14,805	Shorewood	16,275
Wauwatosa	14,679	Wauwatosa	16,073
Greendale	14,541	Elmbrook	15,812
Elmbrook	14,434	Menomonee Falls <i>EP</i>	15,735
Menomonee Falls	14,409	Greendale	15,620
Whitefish Bay	14,032	Whitefish Bay	15,295
Maple Dale-Indian Hill	14,003	Maple Dale-Indian Hill	15,235
Nicolet	13,769	Menomonee Falls <i>BOE</i>	15,206
Glendale	13,736	Nicolet	15,043
Brown Deer	13,496	Glendale	14,972
		Brown Deer	14,845

Menomonee Falls ranked 9th out of 14 districts in 1981-82.

Menomonee Falls will rank 8th out of 14 districts in 1982-83 under the MFEA proposal.

Menomonee Falls will rank 11th out of 14 districts in 1982-83 under the Board proposal.

MENOMONEE FALLS FINAL OFFERS  
 COMPARED TO 13 AREA DISTRICTS  
 SETTLED FOR 1982-1983

MA MAXIMUM SALARY

1981-1982		1982-1983	
Whitnall	28,343	Whitnall	30,989
West Allis	28,343	Nicolet	30,718
Nicolet	28,117	West Allis	30,650
Maple Dale-Indian Hill	27,898	Maple Dale-Indian Hill	30,353
Glendale	27,797	Glendale	30,298
Greendale	27,038	Greendale	29,740
Shorewood	26,473	Shorewood	28,909
Whitefish Bay	26,312	Whitefish Bay	28,680
Franklin	25,870	Franklin	28,384
Menomonee Falls	25,792	MFEA <i>Prop. A</i>	28,129
Wauwatosa	25,688	Wauwatosa	28,128
Elmbrook	25,484	Brown Deer	28,005
Brown Deer	25,461	Elmbrook	27,917
New Berlin	24,660	New Berlin	27,665
		Menomonee Falls BOE	27,219

Menomonee Falls ranked 10th out of 14 districts in 1981-82.

Menomonee Falls will rank 10th out of 14 districts in 1982-83 under the MFEA proposal.

Menomonee Falls will rank 14th out of 14 districts in 1981-82 under the Board proposal.

MENOMONEE FALLS FINAL OFFERS  
 COMPARED TO 13 AREA DISTRICTS  
 SETTLED FOR 1982-1983

SCHEDULED MAXIMUM SALARY

1981-1982		1982-1983	
Nicolet	32,303	Nicolet	35,292
Whitefish Bay	30,665	Whitnall	33,460
Whitnall	30,599	Whitefish Bay	33,425
Greendale	29,266	West Allis	32,250
West Allis	29,220	Greendale	32,192
Wauwatosa	28,833	Wauwatosa	31,572
Glendale	28,697	Glendale	31,198
Maple Dale-Indian Hill	28,298	Franklin	30,931
Franklin	28,192	Maple Dale-Indian Hill	30,753
Shorewood	28,042	Menomonee Falls E.A.	30,078
Elmbrook	26,887	Shorewood	30,022
Brown Deer	26,318	Elm Brook	29,455
Menomonee Falls	26,295	New Berlin	29,445
New Berlin	26,240	Brown Deer	28,948
		Menomonee Falls BOE	27,750

Menomonee Falls ranked 13th out of 14 districts in 1981-82.

Menomonee Falls will rank 10th out of 14 districts in 1982-83 under the MFEA proposal.

Menomonee Falls will rank 14th out of 14 districts in 1982-83 under the Board proposal.